THE HON'BLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION NO. 7591 of 2004

–

Dated: 31-03-2006

Between:

Abdul Wahed.

..Petitioner.

and

A. Vishwanath Goud and another.

..Respondents.

THE HON'BLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No. 7591 of 2004

ORDER:

This petition is filed seeking a writ of mandamus to declare the action of

respondents in making construction of 27 feet wide public road on the southern side of the petitioner's house, situated in plot Nos.29 and 30 in Sy.No.137 at Yeshoda Nagar colony, Tandur village within Tandur Municipality, Ranga Reddy District and putting a gate on the western side to close the road completely, as illegal and arbitrary and consequently to direct the second respondent to stop the said illegal construction.

The case of the petitioner is that he along with his three brothers has purchased two plots bearing Nos. 29 & 30 in Sy.No.137 at Yeshoda Nagar colony, Tandur Village within Tandur Municipality, Ranga Reddy District from its owners by way of registered sale deed dated 16-10-1998. Thereafter, they filed an application before the second respondent-Municipal Commissioner for construction of a building in the said plots and permission was granted by him. Accordingly, the petitioner constructed a house therein. While so, the first respondent has constructed a building in the plot beyond 27 feet wide road on the southern side and also constructed a compound wall leaving 27 feet wide road. It is stated that though the petitioner has approached the second respondent about the illegal construction of first respondent, the second respondent has refused to take action. Hence, the writ petition.

The first respondent filed counter stating that the petitioner himself occupied 27 feet wide road towards the southern side and that the first respondent has constructed the building after leaving the set back without encroaching any road.

The second respondent-Municipal Commissioner filed counter denying all the said allegations and stated that the first respondent has not encroached upon the alleged 27 feet road nor raised any construction over the same, as alleged by the petitioner and in fact, the petitioner himself encroached upon 27 feet which over lapped his plots.

In view of the aforesaid disputed question of fact and on the specific allegation against the petitioner itself by the second respondent-Municipal Commissioner that the petitioner himself has encroached upon the alleged 27 feet road and as the petitioner has approached this Court with unclean hands, there are no merits in the writ petition and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. The status quo order granted

by this Court on 22-04-2004 is vacated. No order as to costs.

_____

31-03-2006

sj